

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 15-0715

LEROY S. ROBINSON,

APPELLANT,

V.

ROBERT A. McDONALD,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before LANCE, SCHOELEN, and PIETSCH *Judges*.

ORDER

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

On July 14, 2016, the Court ordered the Secretary, within 15 days of the date of that order, to assemble the appellant's paper source documents, provide them to the appellant's representative for review pursuant to Rule 10(d) of the Court's Rules of Practice and Procedure, and submit a notice to the Court indicating that he had done so or, if unable to do so, detailing the reasons why he could not. The Court further ordered each party, within 7 days of the date the Secretary filed his initial notice and every 15 days thereafter until the record before the agency (RBA) dispute is resolved or the parties reach an impasse, to advise the Court as to the status of the RBA dispute.

After some delay, the Secretary submitted his initial response on August 17, 2016, and the Court accepted it for filing in a September 1, 2016, order. In that same order, the Court directed the Secretary to respond to the appellant's contentions that, despite scheduling an appointment with the Philadelphia, Pennsylvania, VA regional office (RO) on August 30, 2016, to review the appellant's paper file, the file was unavailable, as it had been sent away to an off-site scanning vendor on August 19, 2016. On September 8, 2016, the Secretary filed his response, apologizing for the mistaken transfer of the paper file and stating that the file had been returned to the RO for the appellant's counsel's review. Secretary's Sept. 8, 2016, Response at 5.

On September 12, 2016, the appellant filed a motion asking the Court to hold the Secretary in contempt of the Court's July 14, 2016, order, as well as a motion to impose sanctions on the Secretary for contempt of court. The Secretary indicated that he opposed both motions. That same day, the Secretary filed a Notice of Appeal from the Court's July 14, 2016, order to the U.S. Court of Appeals for the Federal Circuit.

As the outcome of the Secretary's appeal will have a material impact on the ongoing record dispute in this case, including whether the Secretary is required, pursuant to Rule 10(d) of the Court's Rules of Practice and Procedure, to provide the appellant's paper source documents for review, the Court will continue the July 9, 2015, stay imposed in this case. In addition, as the outcome of the appeal may affect the Court's decision on the appellant's September 12, 2016, motions, the Court will hold those motions in abeyance pending the outcome of the Secretary's appeal. The response schedule set forth in the Court's July 14, 2016, order remains suspended, and the Court's January 29, 2016, injunction remains in effect.

It is so ORDERED.

DATED: September 16, 2016

PER CURIAM

Copies to:

Tara R. Goffney, Esq.

VA General Counsel (027)